



Montoya, Darlene <dmontoya@nmag.gov>

Reponses to Resistance

3 messages

Robert Miller <Robert.Miller@belen-nm.gov>
To: "dmontoya@nmag.gov" <dmontoya@nmag.gov>
Cc: Scott Conner <Scott.Conner@belen-nm.gov>

Wed, Jan 18, 2017 at 8:22 AM

Chief Scott Conner forwarded an email from you to me. As the departments Use of Force instructor, I have attached the part of the departments SOP that deals with all use of force incidents.

The SOP deals with all use of force incident and reporting requirements as well as the departments actions should deadly force be used. If you need anything else, please feel free to contact me, thank you.

Robert Miller

Robert Miller

Deputy Chief

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Montoya, Darlene <dmontoya@nmag.gov>
To: Robert Miller <Robert.Miller@belen-nm.gov>
Cc: Scott Conner <Scott.Conner@belen-nm.gov>

Wed, Jan 18, 2017 at 9:01 AM

Thank you for the quick response. Have a wonderful day and be safe.

[Quoted text hidden]

—

Darlene Montoya, Administrator
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, New Mexico 87501
(505) 490-4854

Montoya, Darlene <dmontoya@nmag.gov>
To: Robert.Miller@belen-nm.gov

Wed, Jan 18, 2017 at 9:01 AM

Your message

To: Montoya, Darlene
Subject: Reponses to Resistance
Sent: 1/18/17, 8:22:05 AM MST

was read on 1/18/17, 9:01:40 AM MST

BELEN POLICE DEPARTMENT	ADMINISTRATION
SUBJECT: <i>Use of Force</i>	NUMBER: <i>ADM.05.01</i>
EFFECTIVE DATE: <i>December 15, 2015</i>	REVIEW DATE:
AMENDS/SUPERSEDES:	APPROVED:
	Chief of Police
NMMLEPSC STANDARDS: <i>ADM.05.01 – ADM.05.04</i>	NMSA:

I. STATEMENT OF PURPOSE

The use of force by a police officer is an extremely sensitive issue and requires careful study and understanding by every officer. This is especially true since the definitions of the use of force by police are based on the determination of reasonableness under the circumstances. Although the careful use of force is authorized by law, the use of unnecessary or unreasonable force is strictly prohibited and will not be tolerated. While clear boundaries of reasonableness can be defined for certain police situations, others must be interpreted for the particular set of circumstances involved. The purpose of this section is to provide each officer with policy guidance and direction with respect to the use of force in carrying out his duties.

II. DEFINITIONS

- A. Deadly Force - Force that is intended or known by the person using the force to cause, or in the manner of its use or its intended use, is capable of causing death or serious bodily injury.
- B. Reasonable Belief - A belief that would be held by a reasonable and prudent law enforcement officer in the same circumstances as the acting person.
- C. Objectively Reasonable Force - Use of the reasonable amount of force needed to achieve control over an incident or person.
- D. Serious Bodily Injury - Injury that creates a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of a bodily member or organ.

III. GENERAL POLICY

- A. Objectively Reasonable force may be used by an officer in the performance of duties, when:
 - 1. Necessary to preserve the peace, to prevent the commission of an offense or to prevent suicide or self-inflicted injury.
 - 2. Making lawful arrests and searches, overcoming resistance to such arrests and searches, and preventing escapes from custody.
 - 3. In self-defense or defense of another against unlawful violence to a person

or property.

4. Preventing or interrupting an intrusion on or interference with the lawful possession of property.
-
- B. An officer may use **objectively reasonable** force to overcome resistance to the lawful performance of duties, even though there is no immediate or apparent danger calling for self-defense. However, the officer must be acting within the scope of official authority. Every reasonable opportunity must be given to the person being arrested to comply. Force should be used only after all other means have failed to produce compliance.
 - C. Before the application of objectively reasonable force, officers should identify themselves as police officers and state their purpose to the offender and others present. This identification is not necessary if the officer reasonably believes his purpose and identity are already known or conditions exist which render it unfeasible to identify.
 - D. There is no specific rule fitting all cases as to how much force and means may be used, each case must be decided in the light of its own facts and circumstances. Under no circumstances will the force used be greater than necessary and in no instance will deadly force be used except as stated in the Deadly Force section of this chapter.
 - E. Officers will use only the force necessary to accomplish lawful objectives. Officers must exhaust every reasonable means of employing the least amount of force appropriate to the situation.
 - F. Responses to Resistance (4th Amendment) standard is taught in the New Mexico Law Enforcement Academy and that training is expected to be used by officers of this department to determine the appropriate course of action when interacting with a person(s) in a situation which may require the use of force.
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- A. A written use of force report will be submitted whenever an employee:
 1. discharges a firearm, for other than training or recreational purposes;
 2. takes an action that results in, or is alleged to have resulted in, injury or death of another person;
 3. applies force through the use of lethal or less-lethal weapons; or
 4. uses any equipment applying force (spike system, riot gear, fire equipment etc.)

In any incident where use of force is used, officer(s) shall document the incident in an incident report and Use of Force report. The report will include a detailed description of the events leading to the necessity for the use of force; the

amount and type of force used; the nature and extent of injuries, if any, and treatment rendered; identity of individuals involved and other pertinent information.

The exception to this is when the only force used was a firm grip/or use of handcuffs.

B. Non-injury Use of Force

The use of Defensive Tactics frequently achieves the desired results without injury to any parties. However, documentation of such incidents is required. This documentation will normally be sufficiently covered in an incident report prepared as a result of the event. Also, a Use of Force report shall be prepared. This account will include all circumstances that led to the use of a tactic and its actual use. The approving supervisor will ensure that the events are presented fully, in a clear and accurate manner.

C. Personal Injury Incidents

Photographs of the injuries will be taken, if possible, and included with any reports. This applies to both officers and/or suspects.

D. Medical Aid to Injured Parties

When a person is injured because of an officer's use of force, the officer shall notify his immediate supervisor and seek medical treatment for the injured person.

E. Routing of Paperwork

Anytime an incident involves the use of force, the reports will be reviewed by a supervisor within 24 hours and then routed through the chain of command. When a supervisor believes there may have been an inappropriate use of force, he/she will provide his/her supervisor with a written explanation as to why the use of force was inappropriate.

V. LESS-LETHAL FORCE

A. Defensive Tactics

In order to provide members of this department with information, the Defensive Tactics Coordinator will schedule periodic training sessions which enable officers to learn and exercise acceptable methods of defensive tactics. Officers may use defensive tactics that they have been trained in and are qualified to use.

B. Police ASP Baton

1. The Department issued ASP baton may be used if a suspect has escalated to using threatening statements and/or gestures and begins to close the distance on the officer or another person in a threatening manner as if to batter them.
2. The ASP baton is not designed to be used as a club or bludgeon. Strikes should target areas of the body which may result in compliance by the suspect or allow the officer to gain control.
3. Strikes to parts of the body (head, neck, spine, groin, or clavicle) capable of inflicting death or serious bodily injury shall be avoided unless justified by the guidelines of the Deadly Force section of this chapter.

C. OC Spray

OC Spray (pepper spray) plays a distinct and viable role in the continuum of force options and gives the individual officer an alternative to hard empty hand techniques and the use of an impact weapon, ASP.

1. Use of OC Spray

- a. The OC spray may be used on a suspect who is non-cooperative and is resisting the efforts to control him by but not necessarily limited to the following actions:
 1. suspect not responsive to directions.
 2. verbal resistance or body posture
 3. pulling/moving running away
 4. aggressive movements and an escalation of resistive force.
- b. The OC spray may be used if a suspect has escalated to using threatening statements and begins to close distance on the officer or another person in a manner as if to batter them.
- c. The use of OC spray is target specific and should result in the officer's ability to gain control of the suspect.
- d. The target area will consist of the face, specifically the eyes.

- e. Keep the application to the absolute minimum required to effectively control the subject.
 - f. The use of OC spray shall not be used to threaten to elicit information nor will it be used on people who are handcuffed, secured, and properly in custody.
- 2. Decontamination
 - a. Decontamination begins after the suspect has been restrained with handcuffs or by other means and the suspect's resistance has ceased.
 - b. Decontamination should begin in a reasonable time frame and officer safety concerns should be taken into consideration.
 - c. Expose suspect to fresh air and flush affected area with water.
 - d. Call medical personnel (EMS) to perform a cursory check of the suspect, to remove any contact lenses if necessary and to continue flushing the suspect with water.
 - e. Once the suspect has been transported to the detention facility, the on duty detention facility personnel shall be notified that the suspect has been sprayed with OC.
 - f. Under no circumstances will any creams, salves, or oils be applied to the affected area.
- 3. Reporting
 - a. As with any use of force or application of force, a written report will be submitted detailing the use of the OC spray, decontamination procedures and the events leading to the use of the OC spray.
 - b. Anytime the OC spray is used, the approving supervisor will be responsible for ensuring that a copy of the report is forwarded up the chain of command.
- D. The ADVANCED TASER is a Conducted Energy Weapon; an electronic incapacitation device. It is a defensive weapon, which is listed in the force continuum as O. C. spray and soft empty hands. The ADVANCED TASER functions in two ways;
 - 1) It uses compressed nitrogen to project two probes a maximum of 21 feet. An electrical signal is then sent to the probes, via small wires, which disrupts the body's ability to communicate messages from the brain to the muscles and causes motor skill dysfunction.

- 2) Acts as a touch stun system when brought into immediate contact with a person's body.

The decision to use the ADVANCED TASER is based on the same criteria the Officer uses when selecting to employ O. C. spray, or a baton. The decision must be made dependant on the actions of the subject(s) or the threat facing the Officer(s), and the totality of the circumstances surrounding the incident. In any event, the use of the ADVANCED TASER must be reasonable and necessary.

The ADVANCED TASER is not meant to be used in deadly force situations. The ADVANCED TASER must not be used without a firearm back up in those situations where there is a substantial threat towards the Officer(s) or others present.

The ADVANCED TASER provides a force option in which the officer does not have to get dangerously close to a threat before deploying the tool. Using the ADVANCED TASER may greatly reduce the need for other types of physical force by the Officer(s) resulting in a serious or potentially deadly injury to the offender, Officer, or others present.

Any use of an electronic incapacitation device contrary to the direction of this policy can result in the revocation of the Officer's right to use such product and may subject the Officer to disciplinary action.

E. 12 gauge Bean-Bag

1. Bean-bags are considered to be extended range impact weapons that allow officers to deliver a similar amount of force comparable to batons.
2. The bean-bag may be used when other less - lethal force options have been ineffective or when it reasonable appears that such options will be ineffective in subduing the subject. Examples of situations in which the bean-bag may be used include, but are not limited to, the following:
 - a. Dealing with the mentally ill subject who is perceived to be violent.
 - b. Armed subjects.
 - c. Warrant service where the subject is perceived to be violent.
 - d. Violent persons under the influence of drugs and/or alcohol.
 - e. Persons expressing the intent and having the means to commit suicide.
 - f. When deemed a reasonable alternative to lesser force options that will likely to be ineffective or greater force options that may be inappropriate given objective circumstances.
3. Where possible, the bean-bag operator should consult with a supervisor prior to the use.

4. The bean-bag should not be pointed at any individual unless the officer involved reasonable believes it will be necessary to use the device.
5. The bean-bag shall not be used:
 - a. When the operator cannot, for safety or other reasons, approach the subject within effective range of the device;
 - b. When it is reasonable to believe that incapacitation of the subject may result in serious injury or death.
6. In less-lethal force situations, when possible, officers should avoid using the bean-bag on:
 - a. Persons in wheelchairs or in control of a vehicle;
 - b. Pregnant women;
 - c. People with known heart problems;
 - d. People with apparent debilitating illness or the elderly;
 - e. Children or those under 80 pounds;
 - f. Individuals with known neuromuscular disorders such as muscular sclerosis, muscular dystrophy.
7. Only officers who have successfully completed the agency's approved course of instruction on the bean-bag are authorized to use it in tactical situations.
8. Officers of this agency shall receive refresher training in use of the bean-bag on an annual basis during firearms instruction.

UNDER NO CIRCUMSTANCES DOES A BEAN-BAG ROUND GO INTO ANYTHING OTHER THAN A 12 GAUGE SHOTGUN.

VI. DEADLY FORCE

- A. Authorized Use of Deadly Force
 1. Deadly force may be used only when the officer reasonably believes that the action is in defense of human life, including the officer's own life, or in defense of any person in immediate danger of serious bodily injury.
 2. An officer may use deadly force:

When the suspect is intent on immediately endangering human life or immediately inflicting serious bodily injury unless apprehended without delay. The officer must reasonably believe that the suspect is armed or has the means to inflict death or serious bodily injury.

- a. Ability (Weapon)
 - b. Opportunity (Distance)
 - c. Immediate Jeopardy (Officer's life or someone else's life is in immediate jeopardy)
 - d. Fleeing felons (must meet the above requirements)
3. Prohibited uses of deadly force:
- a. Officers shall not unreasonably or unnecessarily endanger themselves or the public in applying deadly force pursuant to this policy or state law.
 - b. An officer shall not rely solely on third party reports as a basis for use of Deadly Force, without firsthand knowledge of an alleged offense.
 - c. An officer shall not use deadly force in situations that would not be in accordance with New Mexico State Statutes.
 - d. In an attempt to apprehend fleeing felons or escapees whom are not placing the officer or another person in immediate danger of death or immediate serious bodily injury.
4. All officers shall be provided with and be familiar with all provisions of the New Mexico State Statutes and this directive governing the legal use of Deadly Force.

B. Warning Shots are prohibited.

VII. ADMINISTRATIVE DUTY

- A. Immediately following an officer's involvement in an incident involving serious injury or death. The officer will be automatically placed on administrative duty pending a review by the Chief of Police on the next normal work day. Unless the duty status is changed to a suspension status by the Chief of Police, the officer shall remain in an administrative duty status until such time as the matter is resolved legally and administratively.
- B. Assignment to administrative duty is non-disciplinary with no loss of pay or benefits. This duty is designed to:

1. address the personal and emotional needs of the officer involved in the use of deadly force and,
 2. insure the community that the facts surrounding the case are fully and professionally investigated.
- C. An officer placed on administrative duty will be assigned to office duty in civilian clothes.
- D. The officer may be placed on administrative leave instead of administrative duty at the discretion of the Chief of Police. Assignment to administrative leave is non-disciplinary with no loss of pay or benefits.
- E. An officer on administrative leave shall insure his/her availability to investigators until the investigation has been concluded.
- F. Officers on administrative duty or leave are authorized to carry an approved firearm, unless otherwise directed by the Chief of Police. Officers shall not work off-duty police related jobs and should not enforce laws and make arrests except in emergency situations.
- G. An officer whose action results in a deadly force incident will be required to counsel with the Department appointed counselor. The counselor must make written notification that the officer is fit for duty before the officer returns to duty.
- H. The Department will make available and reserve the right to require counseling for officers who had involvement in a deadly force incident.

VII. INCIDENTS OF FORCE REVIEW

- A. If a use of force reasonably indicates a possible violation of BPD policy or other inappropriate conduct, the immediate or any other supervisor will refer the matter directly to the Office of the Chief for review.
- B. Referrals to the Office of the Chief will be automatic and take place immediately anytime there is a firearm discharge (except at the firing range or in the event of putting down an animal.)
- C. The Office of the Chief will be responsible for ensuring that all use of force data from all reports are regularly and accurately compiled, analyzed and reviewed.
- D. The Administrative Staff will
1. Analyze use of force data on a quarterly, cumulative basis to detect trends;

2. Have compiled in writing and review use of force incident by officer and type of force used and
3. Review the data for the purpose of identifying and acting upon their implications for policy and training designed to ensure that officers are using only appropriate types and amounts of force.

IX. TRAINING

- A. Annual training will be conducted to instruct officers in the Use-Of-Force policy. This instruction will be documented.
- B. Copies of this policy will be issued to each officer, before being authorized to carry a weapon, and will be updated as needed. This issuance and instruction will be documented.